IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3123 OF 2003
IN
SUIT NO.3262 OF 2003

Smt.Sushma P.Kunekar ..Plaintiff

Vs.

Kashinath J.Patil & Ors. ..Defendants

Ms.Kiran Basalia a/w Mr.Vinay Bahte and Mr.Vikas Mahangare i/b Haresh Mehta and Co. for the plaintiff

Mr.Dilip Rai i/b Rupa Naik for the defendant no.1

CORAM : S.U.KAMDAR, J
DATED : 1ST MARCH, 2006

P.C.:

1. The present suit is filed for administration of the estate of the deceased Jagannath Sakharam Patil who died on 9.9.75 and thereafter the mother Sulochana Jagannath Patil who also died on 18.12.92. The plaintiffs and the defendants are having 1/4th share each in the estate of the deceased. The deceased has left behind four chawls which are described at Ex.A and B to the plaint. The chawls are tenanted. Plaintiff has filed a suit for administration of

the estate and in the meantime sought certain prayers in respect of injunction and receiver in respect of the said property.

2. By an ad interim order dt.18.12.03 this court has already granted an ad-interim injunction. However, further application has been made by the plaintiffs by filing additional affidavit dt.7.2.06. In the said additional affidavit it has been brought on record that defendant no.1 has mismanaged the suit properties and handed over some of the portion of the said property to one builder, Mr.Shaikh Manan and the said Mr.Shaikh Manna demolished the structure and want to construct a building thereon. It has been also mentioned in para 5 of the said affidavit that the defendant no.1 is disposing off and / or parting with possession of the suit property to the said builder.

3. The learned counsel for the defendant no.1 has contended that the suit is belated as the father expired in 1975 and even mother expired in 1992 and therefore, no interim order should be

granted. He has further contended that he is managing the property and there is no mismanagement. However, he admits that one of the property has been taken over by the builder and the builder is in possession thereof. The learned counsel for the defendant no.1 states that he has not put the builder in possession but the builder has directly entered into an arrangement with the tenants. However, he admits that he was a person recovering the rent from the tenants even in respect of the said property the possession of which is taken by the builder. He also admitted that the builder is carrying on construction on the said property.

4. In the light of the aforesaid fact, I am of the opinion that the properties are required to be protected. Premises are fully tenanted. Tenancies are transferable and recovery of rent and payment of property taxes is an essential duty to be carried out. In the light of the fact that during the management of the said property by the defendant no.1, one of the property has been lost to the builder, it is necessary that Receiver

should be appointed. Accordingly, I appoint Court Receiver, High Court, Mumbai in respect of the properties which are mentioned in Ex.A and B to the pliant. However, Receiver is directed not to dispossess any person who is found in possession of their respective premises. Receiver is further directed to attorn the tenancy in his favour and recover the rent and pay the property tax. In so far as property which has been in possession of the builder is concerned, Receiver is appointed and Receiver will appoint such person who is found as agent of Receiver subject to the usual terms and conditions. Notice of Motion is accordingly disposed off till the Receiver takes charge. Ad interim order dt.18.12.03 shall continue.